

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

LARRY HENDRIX,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ORDER

17-cv-020-wmc
06-cr-54-bbc

Petitioner Larry Hendrix, by counsel, seeks to vacate the sentence imposed in Case No. 06-cr-54 under 28 U.S.C. § 2231 in light of the United States Supreme Court's recent holding in *United States v. Johnson*, 135 S. Ct. 2551 (2015), which held that the residual clause in the Armed Career Criminal Act ("ACCA"), 18 U.S.C. § 924(e)(2)(B), violates the due process clause of the Fifth Amendment.

On December 7, 2006, petitioner was sentenced, after a jury trial, on one count of being a felon in possession of a firearm. *See* 18 U.S.C. § 922(g). Pursuant to the terms of the ACCA, the court found that petitioner had three qualifying predicate convictions which warranted imposition of 262 months in prison.

Petitioner represents that his motion to vacate is "unopposed," and that Assistant United States Attorney Laura Przybylinski-Finn informed petitioner's counsel that the government does not oppose the motion. The parties agree that under *Johnson*, petitioner is entitled to immediate release from prison. They further agree that the term of supervised release should be reduced from five years to two years, provided a new special condition is added to require that defendant serve four months in a halfway house, in order to avoid Mr.

Hendrix's abrupt release and to facilitate his transition into the community.

The court finds that under the circumstances of this case, petitioner Hendrix can show a miscarriage of justice sufficient to justify relief pursuant to 28 U.S.C. § 2241 and the savings clause in 28 U.S.C. § 2255(e). The court further finds that a sentence of time served is reasonable and no greater than necessary to hold the defendant accountable and protect the community. Accordingly, petitioner's motion will be granted.

ORDER

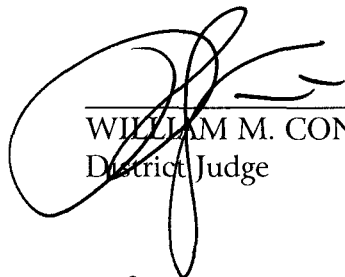
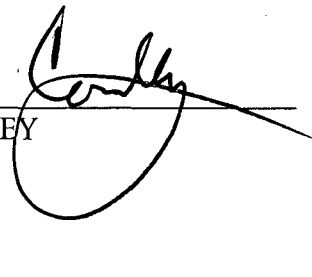
IT IS ORDERED that:

1. The Unopposed Petition to Vacate Sentence Under 28 U.S.C. § 2241 is GRANTED.
2. The court sentences the defendant to time served, effective immediately.
3. The term of supervised release is also reduced from five to two years in accordance with 18 U.S.C. § 3583(b)(2), and includes an additional special condition, no. 5:

Spend 120 days in a residential reentry center, as approved by the supervising U.S. probation officer, with admission upon the first available vacancy. Defendant may be absent from the center for employment purposes, for mental health counseling and treatment and for passes consistent with program rules. Defendant is to pay his own medical expenses, if any, and is to pay 25% of his gross income toward the daily cost of residence. Defendant may be discharged early from the facility upon the approval of both the facility administrator and the supervising U.S. probation officer.

Entered this 11th day of January, 2017.

BY THE COURT:

WILLIAM M. CONLEY
District Judge